IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. No. 4425 of 2025 in
Cr. Appeal No. 63 of 2023
Reserved on : 13.10.2026.
Date of decision: 27.10.2026
Date of upload : 27.10.2026

Lucky Raj …Applicant-Appellant

Versus

State of Himachal Pradesh …Respondent

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? [1] *Yes.*

For the Applicant. *Mr. Chetan Thakur, Advocate, vice Mr. Arun Sehgal, Advocate.*

For the Respondent: *Mr. I.N. Mehta, Senior Additional Advocate General.*

Vivek Singh Thakur, Judge

This application has been preferred by applicant-appellant for suspension of his sentence awarded to him, vide judgment of conviction and order of sentence dated 29.12.2022, passed by Additional Sessions Judge (Fast Track Special Court under POCSO Act), Kangra at Dharamshala, H.P.

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

in Sessions Case No. 17-B/VII/2020/2018, titled State of H.P. vs. Lucky Raj, arising from FIR No. 162/2018, dated 14.09.2018, registered at Police Station Baijnath, District Kangra, H.P., whereby he has been sentenced to undergo rigorous imprisonment for a period of 20 years and to pay fine of Rs. 50,000/- for offence punishable under Section 376(3) of IPC and in default of payment of fine to further undergo rigorous imprisonment for a period of five months.

2. At the time of occurrence, applicant-appellant was about 31 years old, whereas victim was minor, below 12 years of age.

3. Prosecution story is that on 11.09.2018, in between 3:00 P.M. to 5:00 PM, applicant-appellant called the victim to his house, and asked her to fold her shirt, and when she did the same, he touched and kissed her breast, and thereafter, asked to take off her *pajama*, and when she downed her *pajama*, he touched and kissed her private part. Thereafter, he asked her to wear the clothes and had also cautioned the victim not to disclose anything to her mother, otherwise she would be thrashed, and the applicant-appellant asked the victim to leave as her grandfather had come.

4. Learned counsel appearing for the applicant-appellant has submitted that the applicant-appellant has been implicated in the case on account of enmity between families of applicant-appellant and victim, and her date of birth has not been proved on record in accordance with law, and further that even if prosecution case is accepted to be true, the commission

of offence alleged to be committed by applicant-appellant does not fall in the definition provided under Section 3 of the POCSO Act.

5. Learned counsel for applicant-appellant has further submitted that there is discrepancy in identification of place of occurrence, FIR was recorded belatedly, and the same was not sent to Judicial Magistrate on the same day, and medical evidence is not corroborating the allegations leveled against the applicant-appellant. The first person to whom the incident was allegedly informed, namely Chahat, has not been examined, but has been given up on 04.07.2022 and, therefore, it has been submitted that applicant-appellant has a fair chance of acquittal and, thus, he deserves to be enlarged on bail.

6. Learned counsel for the applicant-appellant has submitted that it has been admitted by PW-2 (victim) in her cross-examination that her family and family of applicant-appellant were not in visiting terms, and therefore, the prosecution story has become doubtful, because when the families were not in visiting terms, there was no question of victim going to his house on the call of applicant-appellant, and thus it has not been proved on record that in what circumstances, victim visited the house of applicant-appellant, when both families were not in visiting terms.

7. In this regard, it can be noticed that in statement of applicant-appellant recorded under Section 313 Cr.P.C., in response to Question No. 31, that why witnesses had deposed against him, he has stated that he did

not know, however, the complainant was having strained relations with his family.

8. In answer to Question No. 32, in statement under Section 313 Cr.P.C., whereby he was given opportunity to say anything if so wanted by him, applicant-appellant has replied only to the extent that he was innocent and complainant used to abuse him and his family members.

9. Regarding date of birth, it has been submitted by learned counsel for the appellant-applicant that only Birth Certificate (Ext. P2/PW6) obtained from Registrar, Birth & Death, Nagar Panchayat Baijnath Paprola, H.P., has been proved on record and there is no other evidence, indicating date of birth of victim as 07.10.2007.

10. On this count, learned Senior Additional Advocate General has submitted that date of birth was not disputed during trial, as no question has been raised regarding correctness of date of birth, submitted by PW-1 in her examination-in-chief, where she has stated that date of birth of victim is 07.10.2007, and to corroborate the same, Birth Certificate (Ext. P2/PW6) and copy of Pariwar Register (Ext. P10/PW8) has also been proved on record. The same date of birth has been recorded in Pariwar Register as well as Birth Certificate issued by authority.

11. It is a settled law that admitted facts are need not to be proved, and they are deemed to have been proved being accepted by opposite party, and in present case, to the deposition of mother of victim that date of

birth of victim was 07.10.2007, no such question has been put to her, so as to dispute the veracity of deposition regarding date of birth.

12. Plea of learned counsel for the applicant-appellant regarding Section 3 of the POCSO Act is also misconceived, as according to him, even if case of prosecution is accepted to be true, act of the applicant-appellant does not fall in either of the category provided under Section 3 of the POCSO Act.

13. Plea of the applicant-appellant in this regard is misconceived, because the allegation leveled by the victim-child in her first disclosure to her family members, at the time of making statement under Section 164 Cr.P.C., and deposing in the Court as PW-2, her stand remained consistent, and nothing could be brought on record to impeach her veracity.

14. Section 3 of the POCSO Act defines Penetrative Sexual Assault, wherein Clause (d) reads as under:

> "**3. Penetrative sexual assault** : - A person is said to commit "penetrative sexual assault" if-
>
> *(a)* ….. ….. …..
>
> *(b)* ….. ….. …..
>
> *(c)* ….. ….. …..
>
> *(d)* he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

15. Keeping in view the nature of allegation that applicant-appellant kissed the private parts of the victim, the case definitely falls in category of

Section 3(d) of the POCSO Act and, therefore, plea of applicant-appellant is not sustainable.

16. It has been further submitted that there is a discrepancy in place of occurrence of the incident. After going through the record, it can be definitely said that place of occurrence stands identified by victim properly, and therefore, on this ground, applicant-appellant is not entitled for suspension of sentence.

17. Learned counsel for applicant-appellant further submitted that there is delay in lodging the FIR as well as supplying it to Judicial Magistrate. This plea also does not substantiate from the documents placed on record, as it is evident from copy of FIR placed on record that FIR was received by Judicial Magistrate on 14.09.2018 at 07:25 PM through HHC Surjeet No. 1007.

18. It has been submitted by learned counsel for the applicant-appellant that there is delay in lodging the FIR. Learned counsel for applicant-appellant further submitted that according to complainant, incident took place on 11.09.2018, whereas FIR has been registered on 14.09.2018, which indicates that FIR has been lodged after due deliberations, but not on the basis of factual matrix of the case. In the given facts and circumstances, this plea is also not sustainable.

19. From the material on record, it is apparent that victim was upset and under threat, she disclosed the incident to her friend and,

thereafter, she told to others, including her brother and teacher on 14.09.2018, whereafter matter was also reported to the Police.

20. Plea that there is no medical evidence against the applicant-appellant, is also misconceived, because in view of the nature of allegations leveled by victim regarding kissing her private parts after putting off her clothes, there is no occasion of existence of medical evidence to corroborate the allegation leveled by the victim on the applicant-appellant.

21. Learned counsel for the applicant-appellant further submitted that material witness Chahat has not been examined and, therefore, it has been submitted by learned counsel for applicant-appellant that non-examination of Chahat is fatal, as she was the first person to whom victim had disclosed the incident. From record, it is evident that Chahat was given up by learned Public Prosecutor, being won over by the accused person, however, it does not make any difference. All witnesses, cited in list of witnesses, are not mandatorily required to be examined. It is expression or understanding of subject matter which matters and, thus, it is said that it is quality of evidence which matter, but not the quantity.

22. Plea of the applicant-appellant is of no help, because in case, according to the applicant-appellant, Chahat was a material witness, and she would have disclosed the truth on record, but there was nothing which prevented the applicant-appellant to summon Chahat and to examine in the case, so as to bring the truth on record.

23. Learned Senior Additional Advocate General has submitted that prosecution has been able to place on record cogent, reliable and convincing evidence, indicating that applicant-appellant has committed an offence under Section 376(3), IPC and there is nothing material on record to substantiate the plea taken by the counsel for the applicant-appellant and, therefore, application is liable to be dismissed, being devoid of merit.

24. Any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has been given only for the purpose of deciding present application.

25. Considering material on record and aforesaid submissions, we are of the considered opinion that applicant-appellant has not made out a case for suspension of sentence at this stage.

Accordingly, application is dismissed and disposed of.

(Vivek Singh Thakur),
Judge.

(Bhupesh Sharma),
Judge.

27th October, 2026
(Susheel)